



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/633,945   | 08/04/2003  | Michael S. Tyndall   | KOM 4295            | 5207             |
| 321  | 7590        | 09/29/2006           | EXAMINER            |                  |
| SENNIGER POWERS<br>ONE METROPOLITAN SQUARE<br>16TH FLOOR<br>ST LOUIS, MO 63102 |             |                      | TONGUE, LAKIA J     |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1645                |                  |

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/633,945

Applicant(s)

TYNDALL ET AL.

Examiner

Lakia J. Tongue

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-11,17-29 and 54-62 is/are pending in the application.
- 4a) Of the above claim(s) 12-16,38,40,41 and 44-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,17,28,29 and 62 is/are rejected.
- 7) ☒ Claim(s) 4,5,7-11,18-27 and 54-61 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's response filed on July 17, 2006 is acknowledged. Claims 1, 3-5, 7-11, 17-29 and 54-62 are pending and under consideration. Claims 12-16, 38, 40, 41 and 44-51 have been withdrawn from consideration. Claims 2, 6, 30-37, 39, 42, 43, 52 and 53 have been canceled.

The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office Action.

### ***Rejections/Objections Withdrawn***

1. In view of applicants' amendment the rejection of claims 1, 3-5, 7-11, 17-29 and 52-62 under 35 U.S.C. 112, first paragraph (scope of enablement) on page 3, paragraph 8 is withdrawn.
2. In view of applicants' arguments and evidence the objection to the specification for purportedly misspelling words on page 5, paragraph 9 is withdrawn.
3. In view of applicants' amendment the rejection of claims 1, 3, 4, 8, 9, 24, 28, 29, 52 and 53 under 35 U.S.C. 102(b) as being anticipated by Jampani et al on page 5, paragraph 10 is withdrawn.

### **DETAILED ACTION**

Applicant's response filed on July 17, 2006 is acknowledged. Claims 1, 3-5, 7-11, 17-29 and 54-62 are pending and under consideration. Claims 12-16, 38, 40, 41 and 44-51 have been withdrawn from consideration. Claims 2, 6, 30-37, 39, 42, 43, 52 and 53 have been canceled.

The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office Action.

### ***Rejections/Objections Withdrawn***

1. In view of applicants' amendment the rejection of claims 1, 3-5, 7-11, 17-29 and 52-62 under 35 U.S.C. 112, first paragraph (scope of enablement) on page 3, paragraph 8 is withdrawn.
2. In view of applicants' arguments and evidence the objection to the specification for purportedly misspelling words on page 5, paragraph 9 is withdrawn.
3. In view of applicants' amendment the rejection of claims 1, 3, 4, 8, 9, 24, 28, 29, 52 and 53 under 35 U.S.C. 102(b) as being anticipated by Jampani et al on page 5, paragraph 10 is withdrawn.

Art Unit: 1645

4. In view of applicants' arguments the rejection of claims 1, 7, 28, 29, 52 and 53 under 35 U.S.C. 102(b) as being anticipated by Lee et al on page 7, paragraph 11 is withdrawn.

***New Grounds of Rejection Necessitated by Amendment***

***Claim Objections***

5. Claims 4, 5, 7-11, 18-27 and 54-61 are objected to for depending on rejected based claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3, 17, 28, 29 and 62 are rejected under 35 U.S.C. 102(e) as being anticipated by Eisenberg (U.S. 2005/0015854 A1).

Claims 1, 3, 17, 28, 29 and 62 are drawn to a topical veterinary composition for the treatment of bovine mastitis comprising iodine as an anti-microbial agent and a phospholipid-containing skin conditioner, wherein the phospholipid is selected from the group consisting of: linoleamidopropyl phosphatidylglycerol dimonium chloride

Art Unit: 1645

phosphate; sunfloweramidopropyl phosohatidylglycerol dimonium chloride phosphate; sodium olivamidopropyl phosohatidylglycerol dimonium chloride phosphate; stearamideopropyl phosohatidylglycerol dimonium chloride phosphate; ricinoleamidopropyl phosohatidylglycerol dimonium chloride phosphate; di-linoleamidopropyl phosohatidylglycerol dimonium chloride phosphate; poly (ethylene glycol)<sub>n=8</sub> dimethicone sunfloweramidopropyl phosohatidylglycerol dimonium chloride phosphate complex; dimethicone saffloweramidopropyl phosohatidylglycerol dimonium chloride phosphate complex; sodium grapeseedamidopropyl phosphatidylglycerol dimonium chloride phosphate; and sodium boregeamidopropyl phosohatidylglycerol dimonium chloride phosphate.

Eisenberg discloses compositions comprising phospholipids selected from GLA Phospholipid (Sodium Boregeamidopropyl Phosohatidylglycerol Dimonium Chloride Phosphate) at 0.5% of the solution and PTC Phospholipid (Cocamidopropyl Phosohatidylglycerol Dimonium Chloride Phosphate) at 1.5% of the solution (abstract). Moreover, Esienberg discloses that the composition further comprises iodine (paragraph 0060), tocopherols (paragraph 0107) and suitable surface-active agents (paragraph 0114).

Claim limitations such as "for the treatment of bovine mastitis" are being viewed as an intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim

Art Unit: 1645

drawn to a process of making, the intended use must result in a manipulative difference as compared to the art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 458

Since the Office does not have the facilities for examining and comparing applicants' composition with the composition of the prior art, the burden is on applicant to show a novel or unobvious difference between the claimed product and the prior art. See *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald et al.*, 205 USPQ 594.

### ***Conclusion***

7. No claim is allowed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakia J Tongue whose telephone number is 571-272-2921. The examiner can normally be reached on Monday-Friday 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Mark Navarro can be reached on 571-272-0861. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.